

THE LAW OFFICE OF

**ELISA HYMAN, P.C.**

February 8, 2022

*VIA ECF*

Honorable Mary Kay Vyskocil  
United States District Court  
Southern District of New York  
500 Pearl St.  
New York, New York 10007

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 2/8/2022
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Re: *C.S. et al. v. N.Y.C. Dep't of Educ., et al.*  
21-cv-7927 (MKV)

Dear Judge Vyskocil:

I represent the Plaintiffs in the above-referenced case and write jointly with counsel for the Defendants to respectfully request an adjournment of the initial conference currently scheduled for February 15, 2022 and a corresponding extension of time to submit a proposed Case Management Plan ("CMP"). ECF No. 18. This is the parties' second request for an adjournment and extension; the Court granted the parties' prior application. ECF Nos. 17, 18.

As previously reported, Plaintiffs in this action allege that the New York City Department of Education ("DOE"), Chancellor David Banks and the New York City Board of Education ("BOE") (collectively "Defendants" or "DOE") failed to implement orders of administrative hearing officers and denied the student's right to stay-put services (also called "Pendency") under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1415(j), and in violation of the Due Process Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution, 42 U.S.C. §1983, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 ("Section 504").<sup>1</sup>

The parties have continued to engage in settlement discussions in the hopes of being able to resolve the issues without further litigation. Defendants have provided information relating to outstanding payments to one of the providers and issued outstanding payment for the same. Today, Defendants have advised Plaintiffs that they believe there is one outstanding invoice for services, which was received by the DOE in December 2021, and which will be paid in the regular course of business. Defendants have also advised Plaintiffs today that, according to the DOE's review of its records, there are no further past services owed under the administrative hearing decision from September 2018. Defendants, however, will confirm for Plaintiffs that all other providers have been paid, or in queue to be paid, within two weeks. Based on the information provided today, the remaining issue for settlement is Plaintiffs' attorneys' fees as the prevailing party in the 2018

<sup>1</sup> Pursuant to Fed. R. Civ. Pro. 25(d), Chancellor David Banks in his official capacity is automatically substituted for former Chancellor Meisha Porter in her official capacity. The parties respectfully request that the Clerk of the Court amend the docket accordingly.

administrative decision and for fees in this action. To that end, Plaintiffs will provide Defendants with a formal settlement demand, including their billing records, no later than February 15, 2022. Defendants will then need time to seek Comptroller approval to negotiate this aspect of the settlement. The parties have successfully resolved claims for attorneys' fees without court intervention or motion practice and believe they could do so here.

For these reasons, the parties respectfully request an additional 60 days to focus on settlement and request that the initial conference and corresponding CMP be adjourned during that time. The parties do not wish to spend time and resources engaging in discovery, if the case can successfully be resolved via a settlement. In 60 days, or no later than April 11, 2022, the parties propose submitting a status letter as we should know then whether this case is firmly on a settlement track, whether the assistance of a magistrate judge for settlement would be useful, or whether we should set a schedule for discovery or motion practice.

Thank you for Your Honor's consideration of this request.

Respectfully Submitted,  
THE LAW OFFICE OF ELISA HYMAN, P.C.


By: Erin O'Connor

Erin O'Connor, Esq., Of Counsel  
*Counsel for Plaintiffs*

cc: Wynee Ngo, Esq., *Counsel for Defendants*, via ECF

**GRANTED. The initial pretrial conference scheduled for February 15, 2022 at 10:30 AM is ADJOURNED to April 19, 2022 at 10:00 AM. On or before April 11, 2022, the parties shall file a letter advising the Court as to the status (but not substance) of settlement negotiations and whether the assistance of a magistrate judge for settlement would be useful. SO ORDERED.**

Date: 2/8/2022  
New York, New York

  
Mary Kay Vyskocil  
United States District Judge